IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 503 OF 2007.

Vinodkumar Narendrakumar Rakhade
(Rathod) ... PETITIONER

VERSUS

The State of Maharashtra and others. ... RESPONDENTS

....
Shri Mohan Sudame, Advocate for the petitioner.
....

CORAM : A.H. JOSHI AND
R.C. CHAVAN, JJ.
DATED : 07TH FEBRUARY, 2007.

ORAL ORDER :

1. Heard Shri Mohan Sudame, the learned Advocate appearing on behalf of the petitioner.

2. The petitioner herein has challenged invalidation of petitioner's caste claim as “Rajput Bhamta” done by the Caste Scrutiny Committee by its order dated 29.12.2006. Copy of the said order (Marathi) is at page 67 and its translation is at page 76.

3. The petitioner tried to substantiate his caste claim on

various documents, out of which:- (a) four documents are pertaining to himself, namely, the caste certificate issued by the Executive Magistrate, copy of admission register, copy of birth register and copy of transfer certificate; (b) Two documents pertaining to the petitioner's father, namely, caste certificate issued by the Executive Magistrate and the School Leaving Certificate; (c) Three documents i.e. caste certificate issued by the Executive Magistrate pertaining to petitioner's brother; and (d) remaining documents pertain to cousin Shrikant Rakhade which are certificates issued by the Tahsildar and letter of validation of caste of Shrikant Rakhade issued by the Government; (e) Other documents relied upon by the petitioner are the judgments of this Court.

4. After considering the documentary evidence, the Scrutiny Committee found as follows.

"(A) ... the candidate has submitted the photo-copy of the affidavit of Shri Shrikant Khushalsingh Rathod to be belonging to Rajput Bhamta. But, the copy of the Caste Validity Certificate is not submitted.

(B) The entry about the caste in the School Admission Register of the candidate himself, is doubtful.

(C) When the School Leaving Certificate of the father of

the candidate was enquired into, his original entry is found to be “Rajput”. In that regard, the Committee had issued Show Cause Notice dated 12.04.2006 to the candidate, asking him to submit his explanation to the Committee by remaining personally present before the Committee on 29.04.2006.

(D) The candidate remained present before the Committee on 17.11.2006 and submitted one representation in writing. When the said explanation was perused by the Committee, it was found that the said explanation is not pursuant to the show cause notice dated 12.04.2006 and hence the Committee is not accepting the said explanation.

(E) The candidate has not submitted any other cogent evidence in support of his caste claim. The whole evidence produced by the candidate before the Committee, is perused.

(F) The candidate was granted sufficient opportunity to produce evidence. But, the candidate did not produce any pre-1961 document having the entry “Rajput Bhamta”.

(G) The entries in the School Leaving Certificate of the father himself, are bogus.”

5. The decision of the Caste Scrutiny Committee in the result is that the petitioner has failed to establish his caste

claim and the Committee, therefore, invalidated the caste certificate.

6. The petitioner has challenged the order of the Scrutiny Committee and raised following submissions.

"(i) In fact the petitioner's birth certificate was on record which was of the year 1960 and the said birth certificate clearly showed that the petitioner's caste was mentioned as Rajput Bhamta.

(ii) That the Scrutiny Committee committed manifest error of law and fact apparent on the face of record in holding that the Dakhal Kharij Register of the petitioner is fabricated.

(iii) The Scrutiny Committee without any basis came to the conclusion that the word Bhamta was subsequently added.

(iv) Moreover, the Dakhal Kharij Register is always in the custody of School Authority and cannot be tampered by the petitioner. Therefore, there is a clear error apparent on the face of record which vitiates the impugned order of Scrutiny Committee.

(v) The Scrutiny Committee cannot merely go by the documentary evidence but should have also conducted the

other test to find out affinity with the caste such as affinity test etc. However, the Scrutiny Committee did not consider the above aspect and conducted verification of petitioner's caste claim in a most superfluous and perfunctory manner which has vitiated the impugned order dated 29.12.2006 and rendered the same illegal.

(vi) That the petitioner's father's caste mentioned in the School Leaving Certificate issued by the Vinayakrao Deshmukh High School, Lakadganj Nagpur in admission book no.1 at serial no. 73 shows that the sxame was entered as Rajput. However, that entry can be explained on the basis of Govt. Resolution dated 8.2.1968 which clearly shows that references to sub caste etc. in record should be avoided. Moreover, at that time the Rajput itself was listed as Backward community and, therefore, the name of the caste Rajput was entered into the School Record. Thus, it was certainly not the case of taking advantage of the reservation available to the Rajput Bhamta.

(vii) That the Scrutiny Committee clearly committed the basic error of law in not verifying the petitioner's caste claim on the basis of affinity test.

(viii) The Scrutiny Committee has not conducted the enquiry as mandated in the matter required by law."

7. Though various submissions are advanced, thirst is given on the following submissions :-

(i) That the word “Bhamta” came to be introduced only in 1968 in the description of the caste notified as VJNT. It was the policy of the government not to write the sub cast. Therefore, failure to mention the word “Bhamta” in front of the name of the petitioner's father is not fatal.

(ii) The Scrutiny Committee did not undertake the test of “affinity test”.

8. This Court finds that as laid down in Madhuri Patil's case, the affinity test plays indelible role in so far as the adjudication as to any individual's case being `triable' is concerned. The said test need not be enforced in replication to the scrutiny of the claim of non triables under the Maharashtra Caste Scrutiny Manual.

9. The burden to prove one's own claim about the particular caste is solely on the claimant under Section 8 of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. Section 8 reads

as follows :-

> "8. Where an application is made to the Competent Authority under section 3 for the issue of a Caste Certificate in respect of Scheduled Castes, Scheduled Tribes, De-notified Tribes, *(Vimukta Jatis),* Nomadic Tribes, Other Backward Classes or Special Backward Category and in any enquiry conducted by the Competent Authority and Scrutiny Committee or the Appellate Authority under this Act or any trial of offence under this Act, the burden of proving that the person belonged to such Caste, Tribe or Class shall be on such claimant applicant."

10. Once the Scrutiny Committee calls upon the claimant to prove his claim, it does it in the background that on the basis of the documentary and other evidence and the report of Vigilance Cell i.e. what appears to it on evidence so collected that the caste claim needs to be proved as it is not established or proved on the basis of the documents already on the record of the Committee.

11. Petitioner's reliance is on three documents, namely, his father's caste claim, his cousin's caste claim and his own certificate which is the sole evidence.

12. In so far the evidence of the petitioner is concerned, it is recent evidence and does not have value of evidence or documents having probative value. In so far as his brother's record is concerned, it too falls in the same category.

13. In so far as cousin's record is concerned, the word “cousin” in itself does not demonstrate the degree on distance of generation. In vernacular text of the order, he is referred to as “Chulat Kaka”, means at least second cousin. The validation of caste claim of this person can be relevant though shall not ipso facto proof of petitioner's tribe claim, in the event the petitioner proves the blood relation of such person with the petitioner from paternal side, which the petitioner has failed to do so.

14. In so far as the evidence about father's caste is concerned, admittedly the caste mentioned is of “Rajput”. According to petitioner this entry is so recorded because in those times “Bhamta” was not recognized as V.J. This Court is unable to agree to this preposition as in various other contemporary cases people have record of “Bhamta” or “Rajput Bhamta” as their caste.

Thus it is a patent case where the petitioner has utterly failed to prove his caste claim by brining relevant, contemporary or antecedent evidence.

15. In the aforesaid background, though the petitioner has a serious grievance against the impugned order, fact of grievance is not sufficient to call for interference. The petitioner ought to demonstrate as to how the said order is rendered without considering the material on record or that how the interpretation or appreciation thereof is done in such manner which is wholly impermissible being contrary to law. In this situation, this Court has not been persuaded to hold that the impugned order suffers from errors of law or jurisdiction being rendered contrary to the facts on record.

16. The petition, therefore, does not merit any interference and the same is, therefore, dismissed.

JUDGE. JUDGE.

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